Exhibit C

Relevant Excerpt from the January 17, 2019 Hearing Transcript
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THE COURT: Thank you. And my thanks are added to those.

So now that we've all thanked each other thoroughly, let's take a ten-minute rest. We'll reconvene at 2:30.

(At 2:20 PM, recess taken.)

(At 2:35 PM, proceedings reconvened.)

THE COURT: Good afternoon. Please be seated. I beg everyone's indulgence while I sit down.

I'd like to round up my request on the other two matters. Okay?

Mr. Rosen, you are still here?

MR. ROSEN: Do you need me to come down, ma'am?

THE COURT: No. I'm hoping your answer to this will be yes and I'll just repeat it. Oh, the microphone is coming to you.

MR. ROSEN: Yes.

THE COURT: So I'm reserving decision on the 9019 motion and the confirmation motion. I have specifically requested supplementation regarding clarification and scope of the releases, injunctions and related provisions. And also with respect to the supremacy provision, I am accepting the offer from AAFAF of the background for the legislative development process.

And you can throw in there the legal basis for the independent corporation of the Commonwealth of Puerto Rico,

because I don't -- I didn't see statutory citations for that.

MR. ROSEN: Yes, Your Honor.

THE COURT: And it would be very helpful to have a cogent, in one place, written iteration with the citations of the rationale for the validity provisions that Mr. Kirpalani and Mr. Rosen have together offered today.

And what would you suggest as a deadline for that?

MR. ROSEN: Monday, Your Honor.

THE COURT: That would be very helpful. Thank you.

MR. ROSEN: For me, too.

THE COURT: All right. Then I will look forward to it. And thank you.

MR. ROSEN: Thank you, Your Honor.

THE COURT: Good afternoon.

MR. SCHAFFER: Your Honor, perhaps before we go on the clock, I can report that Judge Houser has been relentless and there has been some progress with regard to the remainder of what we're doing here.

Your Honor, for the record, I'm Eric Schaffer of Reed Smith on behalf of the Bank of New York. My partner, Louis Solomon, will be handling the evidentiary aspects today.

Your Honor, what I'd like to report is that with Judge Houser's urging, we have reached an agreement with regard to the Section 19.5 issues with Ambac. On the basis of

that agreement, Ambac will not be participating in the legal argument or the evidentiary part of the hearing.

MR. HERTZBERG: Good afternoon, Your Honor. I'm Gabe Hertzberg from the Curtis Mallet firm. I represent Ambac Assurance Corporation. I'm here to tell you that what Mr. Schaffer said is correct.

THE COURT: Well, thank you for this news.

And thank you, Judge Houser, who I gather helped make this happen.

MR. HERTZBERG: I second that.

THE COURT: So thank you, and congratulations.

MR. GLENN: Good afternoon, Your Honor. Andrew Glenn from Kasowitz, Benson, Torres, LLP, on behalf of Whitebox entities.

THE COURT: Good afternoon.

MR. GLENN: Up until three hours ago, we were coordinating with Ambac on the presentation, argument, and evidence before Your Honor. I'm going to try to stick to the time limits even without their participation. I would just like to ask the Court for its indulgence with a little flexibility, given that this all came about at the last minute. Thank you.

THE COURT: Understood, and you will have it.

All right. So are you ready to begin opening statements?

Mr. SCHAFFER: Yes, Your Honor. Again, Eric Schaffer.

Your Honor, in the last two weeks, we've submitted two expert reports, two briefs. Whitebox has submitted four briefs. I don't think there's a lot that's really new here, but I think what's most significant, though, is this is not the first time we've seen a plaintiff suing an indentured trustee, trying to deprive the trustee of the ability to pay fees and expenses for funds held by the trustee.

In our papers, we cited you to five recent New York cases that considered the same arguments that plaintiffs are making here. Each of those cases determined that unless and until the plaintiff can prove that it comes within the exception, there is willful misconduct or gross negligence, until that time, the trustee should be permitted to draw upon funds in its possession to pay fees in the ordinary course.

There are four decisions from just last year in the Southern District of New York. They were issued by four different judges, involved four different trustees, and each of them rejected efforts by plaintiffs to delay payment of defense costs until after merits were determined.

In each of those cases, the plaintiffs alleged wrongdoing within an exception, and in each case the Court said, we're going to stay that challenge until the trustee is proven to have been found guilty of this misconduct.

In the most recent of these cases, *Royal Park versus U.S. Bank*, Judge Marrero held that plaintiff's arguments must await such time, if any, that the trustee, quote, is found to have acted grossly negligently, unquote. And, of course, all of these cases are in the federal court, so no real harm, because the trustees were not going away.

Similarly, in *Pimco versus Wells Fargo Bank*, a state court decision, it was the same sort of facts. The Court permitted the Trustee to reserve 57 million dollars to pay anticipated legal fees.

Now, Whitebox has said, ah, that case didn't involve a gross negligence claim. No, it involved a claim of willful misconduct. It's in paragraph one of the underlying complaint. And the Court said that there's really no prejudice because the trustee, quote, is going to be around if plaintiffs succeed, unquote, on the underlying merits.

Whitebox says, well, those decisions just maintain the status quo. Well, Your Honor, the status quo here is the trustee holds the money and the trustee is able to pay its expenses on a current basis.

There's no prejudice here to Whitebox, because we agree, first, if there's money left over, of course we're going to refund it. Second, as in the RPI cases, we agree that they may, subject to some appropriate procedures, challenge reasonableness.

And finally, if they prevail, they may seek a judicial determination that we need to disgorge any fees that we may not be entitled to based on a theoretical determination that we were grossly negligent or we engaged in willful misconduct.

So with these protections, I think we are squarely within the *Pimco* decision, the *Royal Park* decision. There is no harm in our retaining these funds.

Now, it's interesting, Whitebox does not acknowledge all of these protections. Your Honor, no one questions the credit of the Bank of New York Mellon, and by contrast, we should not be left to pursue a Cayman Fund or others. In this case, until we are proven to have engaged in bad conduct, we should be entitled to retain these monies and apply them on a current basis.

Now, let me turn to the Plan. The Plan recognizes we have a secure claim. And under 19.5, this Court has determined the amount that, quote, shall satisfy, unquote, shall satisfy all obligations of COFINA and all rights of the trustee under the resolution.

Now, Whitebox has argued it never assumed COFINA's obligations. Well, they didn't object to the Plan. They are stuck with the requirements of 19.5. And the requirement there is that COFINA must satisfy its obligations and the trustee's rights.

This requires that we get, in accordance with PROMESA and the Bankruptcy Code, the indubitable equivalent of our secured claim. They ignored this in their papers as well. Again, there's no objection to this in their plan. We are entitled to the indubitable equivalent.

And standing in the shoes of COFINA, for purposes of 19.5, under that mechanism, they have to show that we are receiving the indubitable equivalent by a preponderance of the evidence. And, Your Honor, they have no evidence. We've submitted two expert reports. They have not submitted anything.

Now, Your Honor, turning to the resolution, which is addressed in 19.5, it gives us multiple layers of protection. I don't think I have time to get into everything in our papers, but of course we covered a lot of this.

We have payment priority. We have lien priority. Section 804 of the Resolution says that we are entitled to payment of trustee's expenses, and it indemnifies us as well against losses and liabilities.

Section 1103 is an intercreditor agreement that kicks in after a default, not between us and COFINA, but between us and bond owners. It gives us a payment priority. And under that waterfall, it is only after we have provided for our expenses and set aside funds that payments would go out to bond owners.

Finally, Your Honor, as we've addressed in our papers, Section 501 is a pledge of the taxes subject to our payment rights under Section 804, and in the express language, all other provisions permitting application for the purposes set forth in the resolution. That includes not just 804, but it includes the payment priority, the intercreditor agreement in 1103.

Let me focus on 1103. They acknowledge that this is an intercreditor agreement among nondebtors. And after default, the Trustee, in its sole opinion, is entitled to reserve amounts that may be advanced for legal fees. This is expressly senior to the bond owner.

The purpose is if COFINA cannot meet its obligations under 804, we have a payment priority against Whitebox. And 1103.3 gives us discretion to make periodic contributions.

Your Honor, we pointed you to the First Circuit's decision in the *HSBC* case. Under Section 510(a), the enforcement of subordination provisions is no longer a matter committed to the Bankruptcy Court's notion of what may or may not be equitable.

Now, we say that our rights are secured, but even if they were not, under the payment priority, under 1103, intercreditor agreement, we come first. And under case law we've cited, if you have a junior creditor that is secured and a payment priority in favor of a senior unsecured creditor,

the senior unsecured creditor receives payment. It recovers.

The only real dispute here under Section 1103 is what comes within the waterfall. And with this, I think it's clear that the litigation expenses here undoubtedly are incurred in a context of our performance of our duties under the resolution.

Our performance is at the heart of the Whitebox claims. It all implicates the integrity of the resolution, the existence of events of default, and the relationship between us and bond owners. We also say under 1103, these are expenses that are necessary, quote, in the opinion of the trustee, unquote, to protect the interest of bond owners.

Now, they say how are bond owners protected? Well, we have an interest in protecting the integrity of the resolution. That includes protecting all other bond owners against specious claims.

It also is a fact that we reserve the right to pursue counterclaims under 19.5, and all of this is determined not now, but it's determined when they file their lawsuit. And it's not altered by the intervention of a Title III proceeding.

They point to 1103, to the language subject to 804. Well, that's not a limitation, it's a priority provision. It's intended to insure that the intercreditor waterfall only becomes applicable if COFINA can't pay. And that makes all

the sense in the world. We should have to look to COFINA first, and where there's a default, as 1103 provides, if COFINA can't pay, then we go to the waterfall.

All of this is part of what I'll call a seamless, interconnected set of protections for the Trustee. And as sophisticated parties -- and the Whitebox folks are very sophisticated. They certainly had the ability to read the indenture, to do their due diligence before investing. They cannot escape the subordination agreement.

Your Honor, there is a lot I could say about 804, but I think, consistent with the time limits here, I'm going to move on, and I'll come back to that if I have time.

And I'll move to Section 501. Under Section 501, COFINA pledges all of the taxes, the sales and use taxes to the trustee as security for payment of the bonds. But if you look at 501, that pledge is subject to Section 804 and subject to the provisions of the resolution for application -- or the purposes set forth in the resolution.

Now, what does this mean? It's subject to 804. That's where COFINA has to pay us. And it's subject to the payment priority in 1103. Those are provisions that are expressly provided to come within the 501 pledge, and they come on a senior basis.

The effect is that even if we were not secured by the charging lien in 804, even then, we still come first. We get

priority under the Section 501 pledge.

The argument they make here is that the 501 pledge really only secures principal and interest. We read these provisions subject to 804, subject to other provisions of the resolution. We read them, right out of the document, this is not a limitation of the trustee's rights. It's a recommendation that we have rights under these other provisions.

If you look at the language, 501 does not say it's subject to 804, but really only for things that may be current expenses or that might be subject to a charging lien. It doesn't say that all rights and priorities under the waterfall exist, but they really only come in after principal and interest.

It doesn't say that because, of course, that would do violence to the intent of this section, and indeed, it would do violence to the intent of the indenture read as a whole. It doesn't exclude the payment priority giving meaning to 501. Our rights are senior. Our rights are secured.

Your Honor, I could get into a discussion of the cases that they cite, *Becker* and others. I really think we've covered them.

THE COURT: I've read the briefs.

MR. SCHAFFER: It's wholly inapplicable. And that enables me to move on.

Your Honor, let me back up quickly to 804, as I see I have a little bit of time that I've left myself. 804 needs to be read as an integrated provision. There are two clauses. There's a clause for payment of expenses. There's an indemnification. They are not redundant.

The indemnification picks up losses and liabilities, but they are completely integrated because the indemnification clause starts out, further, it is all one in the same, and that read is consistent with what this Court did. Harkening back to the first time we were before you in the interpleader, where you said that from time to time, we can reserve for and pay reasonable fees and expenses, whether or not due and owing, and you noted COFINA's obligations survived satisfaction and discharge of the bonds and survived termination of the resolution for any reason.

Just heading to my conclusion, Your Honor. Again, we have layers of protection. We've got the protections in the Plan. We've got the protections, we have the lien and payment priorities in 804 from COFINA. We have the 1103 intercreditor priority of payment over bond owners.

Now, Your Honor, I think it's useful to recognize that when they're attacking our rights under the intercreditor, they're not bond owners. A beneficial owner, as Whitebox claims that it is, does not have standing under the resolution. The bond owners are the registered bond

owners. They have no standing to even challenge our rights under Section 1103.

We then have 501. Your Honor, if you read all of this together, compensation, indemnification, lien priority, payment priority, it demonstrates an intent to protect the trustee and ensure we are not out of pocket unless we have been found, actually found to have been engaged in gross negligence or willful misconduct.

It's confirmed by reading all of the protections that we had, the various exculpations, the limitations. It's confirmed by the cases we've cited about the public policy, protecting the trustee, recognizing the critical role of the trustee.

Your Honor, the notion that when this resolution was drafted, there was an intention that we should assume an obligation to fund, self-fund unknown litigation years into the future, where we're getting compensation of 2,000 dollars per year, per series, that notion would be absurd, and it would be contrary to the history of the role of the indenture trustee, and it would be contrary to practice.

We bargained for the right to cash collateral. It's protected by the indubitable equivalent provisions as incorporated by PROMESA and the Bankruptcy Code. We have a payment priority.

Your Honor, I don't believe they can meet their

burdens with regard to PROMESA and the Bankruptcy Code, and they certainly cannot meet their priorities -- excuse me, certainly cannot meet their burdens with regard to an intercreditor agreement, as to which they are not even a beneficiary.

Thank you.

THE COURT: Thank you, Mr. Schaffer.

Good afternoon, Mr. Glenn.

MR. GLENN: Good afternoon. For the record, again, Andrew Glenn on behalf of Whitebox.

I'd like to start my presentation, Your Honor, with an overview of this undisputed set of consequences. First, the Plan of Adjustment in this case provides Bank of New York with a release of all claims of the parties to the Plan Support Agreement other than Whitebox and Ambac. And our claims were expressly reserved under that Plan Support Agreement.

The record is clear, if you read the words in the resolution and in the security agreement to the resolution, the Bank of New York never has had a secured claim against COFINA. And as much as Mr. Schaffer would want the words to say that, that's not what those words say.

It does not have any right to withhold distributions to any COFINA bondholders for any indemnity claims under the resolution. That is, it does not have a charging lien for the

expenses to be incurred in this litigation. And in fact, COFINA has never had any obligation to advance any defense costs to BNY.

Finally, BNY confirms that Whitebox never agreed to indemnify it as would be required by applicable law.

I think the narrow question Your Honor has to answer in this particular dispute is whether Section 19.5 creates any rights to indemnification beyond those already set forth in the resolution. As we demonstrate in our papers, we think the answer is no.

THE COURT: And so, just to be clear, you dispute the proposition that the resolution creates such rights even as against COFINA?

MR. GLENN: Correct.

THE COURT: And you also say that neither rights, nor a basis for holding Whitebox to any COFINA obligation that might exist --

MR. GLENN: Correct.

THE COURT: -- is imposed by 19.5?

MR. GLENN: Correct.

THE COURT: Thank you.

MR. GLENN: I think the best way to put this is their best case here is they have a general unsecured claim for indemnification that would have been validated at the end of the litigation, which is consistent with what the law says

about general validation claims such as this.

Looking at Section 19.5, Your Honor. The question is, does Section 19.5 state in clear and unequivocal terms that Whitebox must indemnify Bank of New York?

Given that there's no agreement outside of 19.5, we have to parse through this language, and it's all very equivocal.

THE COURT: This language you're talking about is going back to the resolution now?

MR. GLENN: No. 19.5 of the Plan of Adjustment, Your Honor.

THE COURT: Just for clarity, I didn't think I heard Mr. Schaffer argue, and I didn't think I had seen in Bank of New York's briefs, a contention that 19.5 is the source of the indemnification right, although there is an argument that 19.5 is what makes Whitebox responsible for paying COFINA's obligation.

MR. GLENN: Correct.

THE COURT: And I don't see Mr. Schaffer indicating that I've misunderstood his argument.

MR. GLENN: I mean, I think, Your Honor, they need 19.5.

THE COURT: You think they need 19.5.

MR. GLENN: That's our position. That's our position. And if you look at the language in Section 19.5, it

says only -- and again, I'm going to only cite the relevant words, what amount, if any, shall be withheld by the disbursing agent or Bank of New York. And whether Bank of New York shall be reimbursed by Ambac and Whitebox, with the occurrence of fees.

And then it concludes by saying, in each case, such determination and the fulfillment of any obligations of Ambac and Whitebox shall satisfy COFINA's obligations.

So we think, and again, if it's undisputed, that's great, that 19.5 does not create any new obligation. It's merely a reservation of rights.

And I want to make something clear for the record. Whitebox supports this Plan of adjustment. There's a dispute, Your Honor, as to what Whitebox's obligation is under Section 19.5.

If Your Honor concludes that we're wrong about what 19.5 says and what our -- what we believe our legal obligations are, we'll live with that. That's why we voted in favor of the Plan and that's why we're a party to the Plan Support Agreement.

Now, getting to the issue of 1129 and 510(a), we think these provisions are completely irrelevant to this dispute. 1129(b)(2) applies in a cramdown. I think you heard from Mr. Rosen chapter and verse that this is the opposite of a cramdown. This is a fully consensual bankruptcy case.

And even if somehow cramdown were relevant, there's no obligation for Whitebox to provide indubitable equivalency. The subordination agreement, Your Honor, presupposes that there is a priority obligation to pay Bank of New York, and that's what Your Honor otherwise needs to determine without regard to Section 510(a) of the Bankruptcy Code.

We think that the *Becker* case we cited, which is also a very recent vintage, is the most relevant case here, Your Honor. That, too, was a bankruptcy proceeding. The only bankruptcy proceeding, I think, that's at issue in this case or cited in this case.

And if you parse through what happened there, it's fully analogous to this case. You had a Plan that settled the indentured trustee's obligations, vis-a-vis the debtor. It was a litigation against the Bank of New York. The Plan there preserved indemnification rights solely to the extent it could assert a charging lien.

And Bank of New York, in that case, tried to assert that there was a charging lien, and the Court rejected it and said, just as we're contesting here, that the Plan did not create any additional rights beyond those in the bond documents. It only preserves specific rights and obligations in order to permit indenture trustee to achieve specified goals. But in the end, the bondholders never agreed to assume any of the borrower's indemnity obligation.

The COURT: So there was no provision in *Becker* similar to Bank of New York's construction of 19.5, which makes particular beneficiaries responsible for covering COFINA's obligations, according to Mr. Schaffer.

As I read *Becker*, there was no such provision in the Plan, and the initial distribution of the assets of the bond issuer held by the trustee had already been distributed. And this was a second tranche of collections that, under the Plan, was to go to the bondholders.

MR. GLENN: That's correct.

THE COURT: So if Mr. Schaffer is right about what 19.5 does, as between COFINA and Whitebox, in terms of responsibility, then *Becker* is distinguishable, wouldn't it be?

MR. GLENN: Yes, Your Honor, it would be, because there was no Section 19.5 in *Becker* or anything analogous to it.

But then that gets back to my original argument, does 19.5 create a new obligation? And our position is that it does not. And that's why *Becker* is right on point.

There were lots of hurdles for them to come to the conclusion that we have any indemnification obligations under 19.5. The obligation, as we've cited in the cases, must be unmistakably clear from the language of promise.

The Statute of Frauds applies. There has to be

writing against a party who is charged with indemnification obligations. And we cited the *Santa Fe* case from Judge Daniels, where he said, indemnity is also different whereby a court is presented with a dispute. It's really a fee shifting provision, so there's an extra layer.

Here it's not really indemnification. It's one party agreeing to pay another party's legal fees up front, in that case, in a dispute between those two parties. And Judge Daniels said that that also must be unmistakably clear from a writing.

Let's get to the provisions of the actual bond resolutions that I think are most relevant, which Mr. Schaffer glossed over at a very high level. I think we both agree that 804 of the bond resolution is the starting point of the analysis. And there's no dispute that the provision -- starting provision of 804, the first provision, indicates that they do have the right, they do have a lien for fees and expenses incurred in and about the performance of their powers and duties under the resolution.

That's what we call the compensation provision. And that starts with an intro that COFINA shall, from time to time, pay reasonable compensation.

It goes on to say that there's a further agreement to indemnify and hold the trustee harmless for any costs and expenses of the trustee defending itself against any claim,

whether asserted by COFINA, the bondholders or any other parties. And that's not secured.

I mean, I think we've cited case law to the point of you have to read each provision to make sure it's sensible, that it's not superfluous, and that one provision that's very specific on a particular issue must be given some prominence, some deference beyond the more general provisions.

Here it is very clear, and it wouldn't have been necessary to provide that indemnification provision if the compensation provision gave them what they want, or if 1103.1 gave them what they want. We wouldn't need the indemnification in Section 804 of the resolution.

What they've said in 1103.1 is that these were liabilities incurred in and about the performance of powers and duties under the resolution. But that's not what's in dispute here. These are not -- defending yourself in a litigation is not a power and duty that a contract must confer upon you. You have that right under our American legal system.

If we said they didn't have the right to defend themselves in court, that would create another set of problems. So we have to read these provisions together.

THE COURT: So what do you do with the other argument that Bank of New York makes, which is to say that they are defending themselves in and about their powers and duties,

insofar as the litigation that you've brought is about the exercise of its powers and duties? And so it is litigation that's about that leaving aside whether the power to defend yourself is something inherent in existence or something conferred by a resolution.

MR. GLENN: The provision of powers and duties in 1103.

THE COURT: And it's also in 804.

MR. GLENN: And it's in 804.

In 804, it's in the section that provides a lien. If that provision means what it says -- I think I went over this already -- the second part of 804 would be superfluous.

And then if you go to 1103.1, that's the final waterfall provision, the charging lien provision that they're relying on. And first it says, subject to 804. If that language means what they claim it says, then there's no reason to have that language in the indenture. That would render it a nullity.

Second --

THE COURT: Is there a meaningful difference in the specific party obligations, insofar as in the second sentence of 804, it's an affirmative indemnification covenant by COFINA, and Bank of New York is saying that 1103 is an intercreditor provision in which the bondholders are specifically agreeing to this application of the waterfall?

So that although the function arguably may not be the same, the party signing on to the commitment is added to the universe of whoever would be bound by a hold back from funds held by the trustee under the indenture, as to which a charging lien is granted by the first sentence of 804.

MR. GLENN: Again, we have the language in the performance of duties and powers under the resolution. That's a limitation to the waterfall as well.

And if you go back to 804, okay, with the dichotomy of COFINA's obligations, which have the lien, and the indemnification that does not, the part that has the lien is in the performance of their duties under the resolution. So any of that's just buttressing the first part of 804 as well.

And again, we're relying on the word "duties." Okay? And if they wanted to mirror the obligation for the waterfall for that second part of 804, that language could have been inserted in here as well to make it very clear that that's what they were entitled to get. It does not have that language.

The other provision here is that the word "incurred" is in past tense. So if you look at the first part of 1103.1, there's a setup that the part that's necessary to protect the interests of bondholders is a forward-looking obligation, stuff that might happen in the future. You hold back some money to make sure that the bondholders are protected.

The second part of 1103.1 is all in the past tense. It speaks of liabilities incurred and advances made, not future liabilities to be incurred to their law firms, to their expert witnesses and the like. So we think that language must be given effect as well.

I'll conclude by showing Your Honor that the security agreement in this case is at the end of the resolution. It says very clearly that only principal, interest and other nonindemnification -- not even fee-related matters are covered by the security agreement and the grant to Bank of New York.

They cited Section 501 as well. And that's almost a mirror image. But there's no language in 501 that provides them with a grant of the pledged property for this purpose. They are relying on language at the end of there that really does not support what they're saying.

So just to recap, we think the *Becker* case is controlling if Your Honor concludes that Section 19.5 doesn't create any new rights.

The *Royal Park* line of cases that they cited relates to parties that challenged actions, I think three years in the future in one case before Judge Caproni, where they were already litigating and funding themselves. And the Court stepped in and said, look, this is a matter of judicial economy. Right? Why am I going to deal with this now when I can deal with this later?

It's a much different situation here where we're dealing with the finality of a bankruptcy distribution and moving forward in this case based on what the terms of the Plan are.

Thank you very much.

THE COURT: Thank you.

MR. SOLOMON: Good afternoon, Your Honor. Lou Solomon.

THE COURT: Good afternoon, Mr. Solomon.

MR. SOLOMON: I think my job right now is to offer into evidence the Declarations and documents which we have already provided to the Court.

We will begin with the Declaration of Daniel Goldberg, which is at 4767-10 of the ECF numbering. All of these were submitted under motion 4767. So dash ten is his Declaration. Exhibits A, B, C and D are 4767-11, 12, 13, 14. And the Declaration of Robert Fishman is 4767-15.

Your Honor has, by Order, directed that those declarations were their direct testimony. And at this point, I would move those in.

THE COURT: Any objection?

MR. GLENN: No, Your Honor.

THE COURT: The Goldberg and Fishman Declarations at 4767 with the enumerated Exhibits A, B, C and D to the Goldberg Declaration are admitted.

(Whereupon Exhibits A, B, C and D admitted into evidence.)

MR. SOLOMON: Thank you, Your Honor.

The balance of the documents I wish to offer are all in 4767. And other than 4767-1 which are demonstratives, which we're not offering -- I think we're not going to get to it. And beginning with 4767-2, 3, 4, 5, 6, 7, 8, 9, these are documents either that support some of the legal arguments that Your Honor heard, and it's just easy for Your Honor to have it, or they are documents that either one or the other of the witnesses has relied on.

We would offer them at this point.

THE COURT: Any objection?

MR. GLENN: One moment, Your Honor. No objection.

THE COURT: Exhibits 4767-2, 3, 4, 5, 6, 7, 8 and 9 are admitted in evidence.

(Whereupon Exhibits 4767-2, 3, 4, 5, 6, 7, 8 and 9 admitted into evidence.)

MR. SOLOMON: Thank you, Your Honor.

That is the evidence prior to the cross-examination. I see I have a minute, and just to help move this along more quickly, I'd like to lodge an objection to any cross-examination of these witnesses.

Your Honor's Order 4647 directed that we -- that we be told by January 10 at 12 o'clock whether there was going to

be any request for cross-examination, including factual issues to which the proposed cross-examination or testimony relates. The subject matter of the testimony and its relevance to the factual issues, that was not filed. Four days later, we did get something that was not in compliance with Your Honor's Order, but it was also not timely.

The witnesses are here. If Your Honor has questions, we would love for Your Honor to ask them anything you want, but we do object to the cross-examination. We think it's untimely.

THE COURT: Have you flagged this untimeliness objection before to Mr. Glenn or --

MR. GLENN: (Shaking head from side to side.)

THE COURT: I don't remember seeing this happening in writing, and Mr. Glenn is shaking his head, so I guess --

MR. SOLOMON: And I don't think so, Your Honor.

THE COURT: Then I'll hear Mr. Glenn's response. Thank you.

MR. GLENN: Your Honor, we did not provide the writing that he indicated. We had the time allotted. I didn't understand that we were going to be held to provide cross-examination, an outline of cross-examination in advance, and I apologize for not realizing that.

It's unusual, and I didn't realize it existed. So I would like to cross-examine the witnesses.

THE COURT: You didn't read the Order that I filed?

MR. GLENN: I did not see it, no.

THE COURT: You did not comply with the Order, which was specifically designed to give appropriate notice to any party whose witnesses were to be cross-examined, and so the objection is sustained.

MR. GLENN: Okay.

MR. SOLOMON: Your Honor, considering the fact that there's no cross-examination, we have no redirect and we would rest.

THE COURT: And since there is no evidentiary -- principal evidentiary proffer, and there is no cross-examination, the Whitebox necessarily rests. Would you agree, Mr. Glenn?

MR. GLENN: Yes, Your Honor.

THE COURT: All right. And so we will -- and there are no other parties who wish to make statements that I've been made aware of. Oh, Ms. Goldstein.

MS. GOLDSTEIN: Thank you, Your Honor, for allowing me to speak. I will be very brief.

We do not take a position and we have not participated in the --

THE COURT: And you're representing National?

MS. GOLDSTEIN: National Public Finance Guarantee Corporation.

We do not take a position and we have not participated in this litigation insofar as it is to be a determination as to whether and to what extent there would be a charging lien against Whitebox or any indemnification to be put up against Whitebox. We take no position on the merits of that.

However, there's been discussion of a charging lien generally against COFINA cash. To the extent that that is being offered, and I don't believe -- or suggested, we do have a view.

We understand that Bank of New York does not take the position that it's -- such alleged charge, or asserted charging lien would impact any holder of COFINA bonds insofar as those bonds are entitled to distributions under the Plan, other than Whitebox.

The Ambac matter has been resolved, so I don't need to reference them.

So my understanding from Section 19.5 of the Plan, also from BONY's own filings, is that no distribution that is required to be made under the Plan with respect to any other COFINA bondholder will be withheld as a result of, or on account of, the claims. And I'm reading from 19.5.

THE COURT: That's what it says literally, yes.

MS. GOLDSTEIN: Yes. But there's some lack of consistency when you're talking about a charging lien against

COFINA cash. The COFINA cash is what is going to be distributed.

I don't think there's an issue with Bank of New York, but I just wanted to make it clear on the record that we are relying on Section 19.5 and, therefore, would expect -- and perhaps Bank of New York's counsel can clarify, because I believe it is their position that there will be no withholding of any other bondholders' distribution, if there is to be a withholding of any distribution.

THE COURT: So just before Mr. Schaffer speaks, I want to make sure that I understand the depth or breadth of your position here.

Are you saying that your bottom line is you want to be certain that any distribution to which National is entitled will not be debited for any amount that I determine might be properly withheld in order to protect Bank of New York Mellon? You're not so concerned with my reasoning? You're concerned with the bottom line, and you want your hundred percent of your distribution? Is it that?

Or are you saying that you take exception to the line of argument that says this isn't a withholding from Whitebox as such; it is a withholding on account of COFINA's obligation from COFINA's cash before it's distributed?

But in view of the particular provisions of 19.5, it is to be charged against Whitebox's distribution, which leaves

your client in the same cash position, but this line of reasoning that walks through COFINA --

MS. GOLDSTEIN: Our only concern is that -- the cash distributions anticipated to go to COFINA bondholders and, therefore, to our client, and those cash distributions will be for the most part distributed to our insureds. We want to make sure that the charging lien could not impact those distributions.

What happens with respect to the Whitebox distribution is a matter that's before this Court.

THE COURT: Yes.

MS. GOLDSTEIN: We take no position on that.

THE COURT: Thank you.

Mr. Schaffer.

MR. SCHAFFER: Your Honor, Eric Schaffer on behalf of the Bank of New York Mellon. I think we are in complete agreement. Section 19.5 sets forth that it is the mechanism for satisfying the obligations of COFINA, and that they shall be satisfied with monies that otherwise would be going to Whitebox and Ambac.

And of course with Ambac, we still have the agreement we announced at the beginning. So I don't think there is anything in 19.5 that would provide for monies to come from anyone other than Whitebox in this instance.

THE COURT: Thank you.

Mr. Rosen.

MR. ROSEN: Yes, Your Honor. Thank you. I think I was allocated ten minutes, but I think I'll take one or two.

Your Honor, I did participate in a lengthy mediation with Judge Houser, Bank of New York, Ambac and Whitebox with respect to these issue. I'm obviously not getting into what was discussed. 19.5 is the outgrowth of that mediation effort.

And I'm happy that Mr. Schaffer stood up and acknowledged the understanding is that no other COFINA creditor -- no other bondholder, excuse me, would be taxed with any obligations other than Ambac and Whitebox, because that was a very, very important provision to the Plan, and it was important for the PSA creditors that they not be in any way taxed with the ongoing litigation that either Ambac or Whitebox would bring.

I just want to point to one other thing. I appreciate what Mr. Glenn said at the near outset, which is that they do not oppose the Plan and, in fact, they voted in favor of it.

Our concern, Your Honor, is that some of the positions taken by Whitebox in the context of this litigation, however, are tantamount to an objection to the Plan. And if the Court so determines that, Your Honor, that does have severe consequences to a lot parties, especially Whitebox.

So we would want, if the Court goes in that direction, to make a reference as to whether or not it constitutes an objection to the Plan or not. Specifically, Your Honor, if I could elaborate, it would be a violation of the Plan Support Agreement.

THE COURT: Well, I think -- I'm sorry. I understand the connection there. I'm just not sure that I see that that's a necessary stop on my road to a decision, even if I were to rule in favor of the bank.

If I were to say there are these issues that are raised, and even if they might conceivably be construed as an objection, they don't work for whatever other reasons without ruling squarely on whether it's an objection, which you then would say it's a breach of the PSA, since the PSA is not before me for construction.

So what are you asking me to do or not to do?

MR. ROSEN: Your Honor, we've only been concerned that in light of some of the very well-articulated positions by Whitebox in their papers, they have said that the obligation is COFINA's and COFINA's alone if, in fact, it does exist.

And I appreciate that Mr. Schaffer stands up and says if it's COFINA's, I'm still not going to do anything. That's wonderful. And if we get to that point, I don't really care. But if there is a determination that COFINA has the

obligation, and it is not in any way limited to just the distributions of Ambac and Whitebox, and it is taxed on other creditors, that in our opinion, Your Honor, would be tantamount to a Plan objection.

And in as much as they didn't file a Plan objection, it's certainly in accordance -- by January 2nd, and they voted in favor of the Plan, we think they waived any rights to object. But not withstanding that, Your Honor, they continue to say that it is COFINA's obligation to pay any costs to Bank of New York Mellon.

THE COURT: All right. So here's what I plan to do, and I'm going to reserve decision today because I reserved decision on the Plan, which this is a part.

MR. ROSEN: Sure.

THE COURT: I'm going to make a decision as to what 19.5 and the resolution of other documents that have been cited do, as relates to the rights and obligations of Bank of New York and COFINA, insofar as those could financially implicate Whitebox.

I've been asked not to say that as to Ambac, because there is some sort of agreement to which I'm not privy, and that's fine by me. And I hope it stays that way. But, yes, to the appropriate extent, if the other PSA parties decide to take the position that Whitebox has violated the PSA and, therefore, want to deny Whitebox whatever they want to deny

Whitebox, if that ripens into litigation, I'm sure I'll be seeing something from you. But until then, I don't see a need to give you a ruling one way or another.

Mr. ROSEN: That's fine, Your Honor.

May I ask one request of the Court? And I have not discussed this with Mr. Schaffer. I have not discussed it with Mr. Glenn.

Whatever determination that you make with respect to this dispute between these parties, could you please include it in a separate Order or decision and not have it be included in whatever is done with respect to the confirmation of the Plan of Adjustment?

Because in the event one of them wants to appeal, we do not want it to effect in any way the finality of any Order that you might enter in connection, with respect to the confirmation.

THE COURT: Yes. I see that this has been queued up as a separate contested matter, but, in a weird way, not calling itself a motion. But I've conceptually considered it that way, except that I realize I don't have a docket entry to resolve because of the way this has been done.

So it would be helpful, and I think consistent with the way that we're proceeding for Bank of New York Mellon, to file a motion requesting an Order resolving this dispute for the reasons that have been developed on the record in these

proceedings. And on the basis of the prior briefs, for Whitebox to file an affirmation of its opposition to that request for the reasons that have been proffered on the record and in the briefs referenced there. And then I can resolve that motion with an Order that resolves this controversy.

And before I ask you whether that's acceptable to you, I wanted to find out whether Ms. Tacoronte would still speak to me if I told you to do that.

Does that work procedurally in this district?

COURTROOM DEPUTY: Your Honor, I could create an empty motion on the record on behalf of whichever party. It won't have a PDF attached to it, and it will make reference to today's hearing, if that's appropriate for Your Honor.

THE COURT: I think that Ms. Tacoronte has suggested is an even more streamlined approach, which is for her to create in the system a motion that refers to these proceedings today, in respect of which I can enter an Order when I make my decision.

MR. ROSEN: May I suggest one alternative?

THE COURT: Yes.

MR. ROSEN: You already entered an Order in connection with the establishment of this procedure to get here today. Could it just be a tag along to that existing Order?

THE COURT: Well, that request was to establish a

procedure, and so I resolved that motion by establishing the procedure.

But Ms. Tacoronte, what do you think?

COURTROOM DEPUTY: I can link it to whichever filing, existing filing on the record. I just need all the details. So since there is not -- we don't have a PDF attached to it, I will need, you know, filer --

THE COURT: I'm going to go back to my original proposal, because then that bookkeeping can be done in one place by the parties.

So, Mr. Schaffer, will you file a motion asking me for the determination that under the combination of 19.5 and whatever you're entitled to --

MR. SCHAFFER: And Your Honor, may we have until Monday to do that?

THE COURT: Yes.

MR. SCHAFFER: Thank you.

THE COURT: And since Monday is a National holiday, will you, Mr. Glenn, file your formal opposition paper to that by Tuesday?

MR. GLENN: Yes, Your Honor.

THE COURT: All right. Thank you.

MR. ROSEN: Your Honor, thank you very much.

THE COURT: Thank you.

And so I think that brings us to replies and closing

statements.

And so Mr. Glenn, you're up first.

MR. GLENN: I won't, Your Honor, repeat what I've said on my opening statements. We think that if you parcel the language in our brief, that that's dispositive of the issue and you don't need Mr. Goldberg's testimony or certainly not Mr. Fishman's testimony.

Their analysis in their expert reports was based on theoretical assumptions concerning the estimated legal fees to be incurred in these cases. There was no budget provided by the Reed Smith law firm. There was no use of comparable analyses of other cases handled by Bank of New York or Reed Smith. And so we think that it's inappropriate to use those expert reports as a basis to impose any liability on Whitebox.

Similarly, there's no allocation --

THE COURT: You say imposed liability. You mean if I find that there is an obligation to reserve or make provision for defense costs, those aren't an appropriate basis for quantifying that obligation?

MR. GLENN: Correct. Correct.

THE COURT: Thank you.

MR. GLENN: We understand, and I respect Mr. Goldberg. He's a former partner of my firm. And it's always difficult, as we know, to create litigation budgets prospectively.

But there's been a lot of litigation in this case already, a lot of overlap with the interpleader case that was well under way with document discovery. And instead, what Mr. Goldberg did is he created a hypothetical, round-up analysis that was untethered to any work that had been done previously in the case, untethered to whether 40 depositions, which was his assumption what was needed, untethered to the allocation between Whitebox and Ambac litigation.

And frankly, we don't know what the Ambac resolution is. So it's hard with no allocation from the Court to figure out how much now Whitebox would have to pay, given the settlement and given the unreliable nature of Mr. Goldberg's approach. But we don't think you need to get there.

And we provided Your Honor with, I think, three briefs, where we parse through the language in this case. And I don't think I need to say anything more, other than to refer back to those briefs, which I think parse through the actual words in this resolution as opposed to what the Bank of New York would like them to say.

Thank you very much.

THE COURT: Thank you.

MR. SOLOMON: Thank you. May it please the Court. Lou Solomon.

I have only recently been exposed to this, frankly, dazzling display of the administration of justice, the likes

of which I've never seen. I do know how to read Your Honor's Order from May 30, 2017. It was the Interpleader Order. And at that time, the claims against the Bank of New York had already been asserted. They have to be changed now because of the releases that had already been asserted.

Your Honor was reviewing the same resolution, the same instrument that forms the basis of the legal argument Mr. Schaffer gave. And Your Honor says in paragraph nine, from time to time, BNYM shall be entitled to reserve for or pay its reasonable fees and expenses, whether or not due and owing, from the disputed funds.

So that's how Your Honor read the resolution in connection with the Interpleader Order, and it's argued that it hasn't changed, nor should the reading of it change. So the legal issue aside, there's an entitlement to reserve for or pay reasonable fees and expenses.

Mr. Schaffer hasn't proven that it is Whitebox who should be making that payment. The question then becomes one of quantum. We showed up. They didn't. We offered Your Honor two experts, both of them highly skilled in their particular areas of expertise.

Mr. Goldberg does budgets in complex litigation. He lays it out in extraordinary detail, 30 pages, single spaced, that Your Honor has seen. And then in his exhibit, he goes through tasks that would need to be done, how many hours it

will take, what's the blended billing rate for it.

Is there speculation in it? There is speculation in it. Whose responsibility is that speculation? It is Whitebox's responsibility. So Whitebox, who was asked by us on November 29, that is Exhibit 4767-9 -- when the mediation failed, you said okay, we're going into this phase of this. Tell us what the claim is. Tell us what your damages are. And they didn't respond.

So this is Whitebox, who is -- this is the fellow throwing himself on the mercy of the Court, having killed his parents, claiming he's an orphan. They've created the uncertainty, and now he is complaining that there is speculation.

The experts did the best they could, knowing what kind of litigation this is. It was certainly a misstatement when Mr. Glenn said there were no analogies, because having gone through 25 single-spaced pages of telling Your Honor what will need to be done in this case, in three separate places in the Goldberg testimony, in the Goldberg Declaration, he steps back and he says, let me test this against what is reasonable.

And he goes through the fees of other firms in this bankruptcy proceeding. He goes through other complex cases. And in the end, he goes through an analogy to another case against a trustee.

So that is all in the record before Your Honor. And

in that regard, the range that he comes up with between 25 and 40 million dollars is on -- as he said, on the lower end of the range.

Mr. Glenn had said, well, you know, a lot of work had already been done in the interpleader action. He asked the witness that in his deposition. But very little work had been done in the interpleader action, because Your Honor had stayed that portion of the interpleader action.

And in one of the Orders that was an exhibit we have that we offered Your Honor today, it shows that stage three was the claim that Mr. Glenn says they had been litigating. And this case has not gotten to stage three. That was already stayed.

And so nothing, very little had been done. But even so, Mr. Goldberg explains in his testimony to Your Honor, and he took into account, minimally, but still took into account, savings that might be incurred because of the earlier claims that had been asserted. Those earlier claims are going to wash away.

There's not a fraud claim earlier. There is a fraud claim that they say they're going to bring now. And when you sue the Bank of New York for fraud and for willful misconduct, guess what? It is going to defend itself. And the first sort of act contrary to public policy is the notion that Whitebox here can actually tell the Bank of New York how much it can

spend to defend itself.

Mr. Glenn talked about the American legal system. That ain't the American legal system. So we brought you two experts: One, Mr. Goldberg; one, Mr. Fishman. And Mr. Fishman addresses it from the context of a fee examiner, like assuming what Mr. Goldberg said.

Now, is it reasonable in the context that he has experienced. And he tells Your Honor, yes. No cross-examination. No other experts. No other evidence.

The range that they found reasonable, between 25 and 40 million dollars, there's no allocation that should arise because of that, because what the witnesses were telling the Court is how much do his claims cost to defend.

Whitebox doesn't get a buy or a reduction or setoff because Ambac was reasonable and they resolved this through the efforts of Judge Houser. That Whitebox is the dog in the manger, that Whitebox is the holdout, is not a reason to reward it. It's a reason to draw inferences against it.

The midway point between 25 and 40 million dollars is 32.5. Your Honor should ask and direct and set aside 32.5 million dollars be paid by Whitebox. Your Honor has the protections that each of our witnesses has talked about, and that is, if the money is not used, obviously the Bank of New York will repay it.

Second, there is a challenge of reasonableness at the

end of the day. If they want to claim that the Reed Smith firm or whoever's going to do the case was not reasonable, they are not losing their opportunity to argue that. And if they can prove that the Bank of New York acted fraudulently, and one has to suspend his belief in this part of the proceedings -- Judge, I think it's a groundless claim. But that's not what we're here for.

If they can prove that there was gross negligence or willful misconduct, then they have a right to come to court and say that the Bank of New York should turn it all back. Those are protections that we have agreed, the Bank of New York Mellon has agreed should go into the holdback. And with that, I will stop.

Thank you.

THE COURT: Thank you, Mr. Solomon.

Thank you, Counsel, for these arguments and for your submissions. I am taking this matter under submission.

I will look forward to the procedural motions that will give me something to hang an Order on. And you will be notified when I've reached a decision.

Ms. Uhland.

MS. UHLAND: Good afternoon, Your Honor. Suzzanne Uhland for AAFAF, representing AAFAF here today for O'Melveny Myers.

If now is a good time, I had a quick question about

the supplemental briefing. I just wanted to make sure.

THE COURT: Yes.

MS. UHLAND: I understand the additional briefing with respect to the legislation, but the Court also said that explanation -- I think you said of the legal basis of the independent corporation?

THE COURT: Well, I left 170 back in my office, but I think the first item in 170 is that new COFINA is an independent public corporation entirely separate and validly established, and some legal anchors in Puerto Rico law for those propositions would be helpful.

MS. UHLAND: All right. Thank you, Your Honor. That clarifies it.

THE COURT: And if there's anything yet similar in there that is a -- because I don't remember the whole list.

MS. UHLAND: But it's paragraph 170?

THE COURT: Paragraph 170.

MS. UHLAND: Thank you, Your Honor.

THE COURT: It deals with the status of entities and the nature of the entities.

MS. UHLAND: Thank you.

THE COURT: All right. Anything else, Mr. Rosen?

MR. ROSEN: No.

THE COURT: He says no.

Once again, thank you, advocates; thank you, Judge

Houser; and thank you also to Judges Ambro and Atlas and the other members of your team. And I trust that you will convey those thanks.

Keep well. Safe travels, everyone. And I will see you in New York in two weeks I think. I haven't had any objections to New York.

And I'm sorry. Once again, thank you so very much to the Court staff here and in New York for smooth administration of these proceedings and their gracious and hard service. Thank you.

(At 3:44 PM, proceedings reconvened.)

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